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C O N F I D E N T I A L SECTION 01 OF 03 KATHMANDU 001717

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TAGS: [PGOV](#) [PHUM](#) [KWMN](#) [NP](#)

SUBJECT: NEPAL: JUSTICE SECTOR AND RULE-OF-LAW UPDATE

REF: A. KATHMANDU 1406

[B](#). KATHMANDU 1193

[C](#). KATHMANDU 1226

[D](#). KATHMANDU 1583

Classified By: Ambassador James F. Moriarty; Reasons 1.4 (b/d).

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SUMMARY
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[1](#)1. (C) Nepal's legal institutions are making some progress despite the difficulty of operating in an insurgency. The courts, led by a reform-minded Supreme Court Chief Justice, are attempting to reform from within, even though they are still plagued by corruption and traditional societal expectations. The anti-corruption watchdog, the CIAA, has recently had some startling successes, earning it increasing respect from the Nepali public. In short, Nepali legal institutions appear to be slowly evolving away from their historical functions of safeguarding vested interests. END SUMMARY.

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CHALLENGES FOR THE COURTS
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[1](#)2. (C) Nepal's court system, led by the Supreme Court, faces a number of significant challenges. The judiciary remains vulnerable to influence peddling and corruption, and suffers from an insufficient budget and lack of training across the sector. (NOTE: While the judiciary's budget was reportedly increased by NRs 590 million over the last year, at less than .4 percent of the national budget, it remains precariously low by international standards. END NOTE.) Chief Justice Gobinda Bahadur Shrestha and Justice Hari Prasad Sharma admitted to the Ambassador recently that they were concerned about corruption of judges. Consequently, the Court's judicial reform planning included creating a new inspectorate-type organization. Chief Justice Shrestha welcomed any possible technical assistance for creation and institutionalization of this new organization. (NOTE: The legislation that created the CIAA does not give the Commission clear authority to investigate judges or the military. The CIAA has told the Embassy that the judiciary has "blocked" their attempts to investigate judges. The new judicial "OIG" could conduct routine tribunal inspections and also special investigations of allegations of judicial corruption. END NOTE.)

[1](#)3. (C) In addition to concerns about undue influence on the courts, many Nepalis simply do not believe that they can get recourse to the law. Extremely long dockets (some cases have dragged on for 20 years) do not build public confidence. The Supreme Court is aware of the problem and in the past year its administrative arm, in cooperation with the Judicial Council, evaluated and removed scores of unproductive lower-court judges. To ensure that the Supreme Court is able to keep its own docket moving, the Supreme Court is attempting to focus on only those cases that could have a significant impact on nation-wide jurisprudence, Shrestha told the Ambassador.

[1](#)4. (C) Complicating delivery of speedy justice, the judicial summons system in many parts of the country is ineffective and in many cases, non-existent, making it virtually impossible for courts to notify parties of summons to proceedings. Nepal's terrain and insurgency complicate the summons mechanism, making solutions difficult to achieve. Adding to court delays and problems is the difficulty of simply operating during an insurgency that affects most of the country. The impact of the Maoist insurgency on judicial operations is significant. "Maoist Peoples' Courts" operate in some areas and provide an alternative to the State, although in most anecdotal reports kangaroo justice is the only real product of these "alternative courts." The larger impact of the insurgency is the unwillingness and/or inability of judges to work in conflict-affected jurisdictions. Security for judges, as for many civil servants, is a significant concern. (NOTE: Maoists attempted to assassinate Chief Justice Keshab Prasad Upadhyay in 2001. END NOTE.) Some judges operating in Maoist-affected areas reportedly change houses and beds nightly. In some

districts, courts simply do not operate frequently enough to provide citizens with any real sense of recourse to the law, and as a result, citizens have stopped bringing cases.

15. (C) The Chief Justice recently expressed concern to the Ambassador that Nepal's security forces were not yet sufficiently responsive to judicial orders (e.g., writs of habeas corpus, court orders to find or release detainees held under the Terrorist and Destructive Acts Act (TADA)). There were still occasional incidents of non-compliance (Reftels). However, it remains unclear whether non-compliance stems from willful disobedience or is simply a byproduct of the security forces' disorganized and disjointed detention systems, which make it difficult to find detainees in the system and comply with instructions in a timely manner. The justices also acknowledged that cases have occurred in which suspects were released as a result of court orders only to be rearrested by security forces within moments of being freed. (NOTE: Under the TADA Act, security forces, when granted authority by a Home Ministry officer, can arrest and detain for up to 90 days anyone who "has to be prevented from doing anything that may lead to a terrorist or destructive act." END NOTE.)

16. (C) Chief Justice Shrestha has been a supporter of court reform. The Supreme Court developed an ambitious 5-year reform and modernization agenda for the judiciary, which was published in July. The Chief Justice recently told the Ambassador that he had designated his number two, Justice Sharma, as the coordinating justice for the judicial reform and modernization program, hoping to ensure continuity of the process. (NOTE: Chief Justice Shrestha is scheduled to step down in January 2005 upon reaching the mandatory retirement age of 65. Justice Hari Prasad Sharma is the most likely candidate for appointment as the next Chief Justice, but because of his age, he will also have to retire after little more than a year in the position. The prospects for reform after these two justices are less promising, according to legal experts. END NOTE.)

17. (SBU) Through administrative management of the courts, the Supreme Court is working to improve the disposition of commercial disputes. Because of delays and insecurity in the current system, the commercial sector had traditionally shown a preference for alternative dispute resolution over formal litigation of commercial cases. Moreover, many Nepali judges were simply ill trained to handle commercial cases. The Supreme Court is considering a system whereby judges with more expertise on commercial matters at the appellate court would hear appeals of commercial cases from the district courts.

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COMMISSION FOR INVESTIGATION OF ABUSE OF AUTHORITY

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18. (SBU) Chief Commissioner of the Commission for the Investigation of the Abuse of Authority (CIAA) Surya Nath Upadhyay told the Ambassador on August 4 that the work of the CIAA was not just about investigations and prosecutions, but changing national expectations regarding the impunity of government officials. Upadhyay expressed the view that convincing the public that corruption was decreasing was critical to the Commission's mission. To reach this end, he stated the CIAA was working to be responsive to legitimate complaints and to bring strong cases to the Special Court. In 2003, for example, the courts acted upon 55 CIAA cases (as opposed to only 73 corruption cases between 1990 and 2000), with the CIAA earning an 85 percent conviction rate (47 of 55 cases filed resulted in guilty verdicts).

19. (C) Meanwhile, strong public support has invigorated the CIAA staff, Upadhyay stated. The CIAA's aggressive enforcement (i.e., in one night, the CIAA raided 22 government agent revenue houses) has garnered favorable public perception and recent high level corruption cases have strengthened its standing in the eyes of the Nepali public. In recent days, the CIAA has brought corruption charges against three former Inspector Generals of Police. The CIAA's work has also generated powerful adversaries. (NOTE: A recent national poll in Nepal found the CIAA enjoyed the highest rating among 21 Nepali institutions such as the army. The same poll found that the three top concerns of Nepalese were jobs, security and corruption. END NOTE.)

10. (SBU) Despite the success thus far, the Chief Commissioner argued, there remained a need to train not only CIAA staff, but also the judges of the Special Court on corruption issues. There remains a lack of sufficient understanding of national and international law on corruption, understanding of the various modalities of corruption as well as the functional skills needed by judges and prosecutors to handle high profile cases involving powerful personalities. (NOTE: USAID, through its rule of law program, and possibly INL through a technical advisor, are working to expand and deepen the capacity of the CIAA to investigate and prosecute cases. END NOTE.)

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Ministry for Law, Justice and Parliamentary Affairs (MLJP)

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11. (SBU) Minister for Law, Justice and Parliamentary Affairs Minister Tek Bahadur Chokhyal and Ministry Secretary Kul Ratna Bhurtel told the Ambassador on August 2 that ongoing efforts to amend ordinances in the absence of a Parliament had recently been the Ministry's primary workload. Such actions were required, for example, to accommodate WTO and other regional trade accessions. Law Secretary Bhurtel explained that for Nepal to become a party to any multilateral treaty, declaration or convention, the Treaty Act of 1990 required the approval of both the Lower House of Parliament and the King. Since there had been no sitting Parliament to ratify the WTO treaty by the deadline of March 30, the King had amended these clauses through an ordinance to enable the cabinet to approve such treaty in concurrence with the King. (NOTE: As soon as a parliament is convened, these ordinances will become null and the treaty will have to be acceded to through the constitutional process. END NOTE.)

12. (SBU) Chokhyal explained that new appointees to the judicial service ostensibly receive pre-service training from his Ministry's "Judicial Service Training Center." However, training has been largely inadequate. While in-service training programs were occasionally provided, the Minister hoped the new judicial academy would assume the functions of the old training center, and better meet the needs of the country's judicial system. (NOTE: USG and other donors are providing support to stand-up the new Judicial Academy. However, the academy does not yet have a staff or curriculum. END NOTE.)

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COMMENT - SOME CAUSE FOR OPTIMISM

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13. (C) Nepal's justice system hobbles along, constrained by corruption, a lack of resources, antiquated systems and a lack of general access. Despite these realities, justice sector reform efforts, particularly when viewed through the optic of recent Supreme Court actions and decisions, appear serious (Reftels B/C/D). These reform and modernization efforts suggest judicial independence and rule-of-law standards could improve in the next few years, if the efforts are sustained.

14. (C) Recent major successes by the CIAA in the Special (Anti-Corruption) Court, and the CIAA's willingness to prosecute former senior public officials have earned the CIAA a good deal of public respect, a rare thing for a Nepali government institution. More than a score of high-profile investigations are reportedly in the prosecution pipeline; in the last few days the CIAA announced new cases against three former Inspector Generals of Police. Growing non-partisan civil society activism and support for justice sector reform and anti-corruption initiatives are positive signs of the public's reaction to these efforts.

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